UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,139	03/29/2004	Pavan Deolasee	VRTS/0702	2165

44743   7590   05/30/2007
RAYMOND R. MOSER JR., ESQ.
MOSER IP LAW GROUP/VERTAS SOFTWARE CORPORATION
1040 BROAD STREET
2ND FLOOR
SHREWSBURY, NJ 07702

EXAMINER
BONURA, TIMOTHY M

ART UNIT	PAPER NUMBER
2114	

MAIL DATE	DELIVERY MODE
05/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
	10/812,139	DEOLASEE ET AL.
Office Action Summary	Examiner	Art Unit	
	Tim Bonura	2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 March 2007</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-19</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-10 and 12-19</u> is/are rejected.

7)☒ Claim(s) <u>11</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>29 March 2004</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

- **Claims 1-10 and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Corbin, et al, U.S. Patent Number 5,734,814.**

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.   Claims 1-10 and 12-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Corbin, et al, U.S. Patent Number 5,734,814.

3.   Regarding claim 1:

a.   Regarding the limitation of "accessing checkpoint data within the production server," Corbin discloses a system with a cache for storing data and parity of checkpoints. (Lines 1-3 of Column 2)

b.   Regarding the limitation of "distributing the checkpoint data; and storing the distributed checkpoint data on the plurality of backup servers," Corbin discloses a system with wherein the checkpoint data can be distributing across disk drives using a RAID-5 configuration for data and parity information. (Lines 16-22 of Column 2).

4.   Regarding claim 2, Corbin discloses a system with RAID-5, which inherently includes copying the data and parity to drives and storing the data on them. (Lines 16-22 and Lines 58-60 of Column 2).

5.   Regarding claim 3, Corbin discloses a system with RAID-5, which inherently includes creating sub-segments groups of data to be spread across the disk drives. (Lines 58-60 of Column 2).

6.   Regarding claim 4, Corbin discloses a system with RAID-5, which inherently includes striping across a plurality of disks. (Lines 58-60 of Column 2).

7.   Regarding claim 5, Corbin discloses a system with RAID-5, which inherently includes creating parity groups. (Lines 58-60 of Column 2).

8.   Regarding claim 6, Corbin discloses a system with RAID-5, which inherently includes striping across a plurality of disks and creating parity groups. (Lines 58-60 of Column 2).

9.   Regarding claim 7, Corbin discloses a system with RAID-5, which involves mirror data across a plurality of disk drives. (Lines 58-60 of Column 2).

10.   Regarding claim 8, Corbin discloses a system wherein the data can be recovered from the RAID-5 system from a failure of the system by reconstructing data from parity information. (Lines 4-20 of Column 7).

11.   Regarding claim 9:

        c.   Regarding the limitation of "a production server for generating checkpoint data," Corbin discloses a system with a cache for storing data and parity of checkpoints. (Lines 1-3 of Column 2)

        d.   Regarding the limitation of "means for forming distributed checkpoint data comprising sub-segments of the checkpoint data," Corbin discloses a system with RAID-5, which inherently includes creating sub-segments groups of data to be spread across the disk drives. (Lines 58-60 of Column 2).

        e.   Regarding the limitation of "a plurality of backup servers for storing the distributed checkpoint data, where each of the backup servers in said plurality of backup servers

stores at least one sub-segment of the distributed checkpoint data," Corbin discloses a

system with wherein the checkpoint data can be distributing across disk drives using a

RAID-5 configuration for data and parity information. (Lines 16-22 of Column 2).

12.   Regarding claim 10, Corbin discloses a system wherein the party and data are

calculated on the computer system. (Lines 6-8 of Column 2).

13.   Regarding claim 12, Corbin discloses a system wherein the party and data are

calculated on the computer system. (Lines 6-8 of Column 2).

14.   Regarding claim 13, Corbin discloses a system with RAID-5, which inherently includes

striping across a plurality of disks and creating parity groups. (Lines 58-60 of Column 2).

15.   Regarding claim 14, Corbin discloses a system with a cache for storing data and parity

of checkpoints. (Lines 1-3 of Column 2). Corbin discloses a system with wherein the

checkpoint data can be distributing across disk drives using a RAID-5 configuration for data and

parity information. (Lines 16-22 of Column 2).

16.   Regarding claim 15, Corbin discloses a system with RAID-5, which inherently includes

creating parity groups. (Lines 58-60 of Column 2).

17.   Regarding claim 16, Corbin discloses a system with RAID-5, which inherently includes

striping across a plurality of disks and creating parity groups. (Lines 58-60 of Column 2).

18.   Regarding claim 17:

        f.   Regarding the limitation of "accessing checkpoint data that is produced by a first

        server," Corbin discloses a system with a cache for storing data and parity of

        checkpoints. (Lines 1-3 of Column 2)

        g.   Regarding the limitation of "segmenting the checkpoint data; and supplying the

        segments of checkpoint data to a plurality of second servers," Corbin discloses a system

with wherein the checkpoint data can be segmented across disk drives using a RAID-5

configuration for data and parity information. (Lines 16-22 of Column 2).

19.   Regarding claim 18, Corbin discloses a system with RAID-5, which inherently includes

creating parity groups. (Lines 58-60 of Column 2).

20.   Regarding claim 19, Corbin discloses a system with RAID-5, which inherently includes

striping across a plurality of disks and creating parity groups. (Lines 58-60 of Column 2).

Allowable Subject Matter

21.   Claim 11 is objected to as being dependent upon a rejected base claim, but would be

allowable if rewritten in independent form including all of the limitations of the base claim and

any intervening claims.

Response to Arguments

22.   Applicant's arguments filed 03/29/2007 have been fully considered but they are not

persuasive.

23.   In response to applicant's argument that "Corbin does not teach or suggest distributing

checkpoint data within a production server among a plurality of backup servers," a recitation of

the intended use of the claimed invention must result in a structural difference between the

claimed invention and the prior art in order to patentably distinguish the claimed invention from

the prior art. If the prior art structure is capable of performing the intended use, then it meets

the claim. By the broadest, most reasonable interpretation of the claims, Corbin has the

capability of meeting the limitation of the claims. Corbin discloses a system with wherein the

checkpoint data can be distributing across disk drives using a RAID-5 configuration for data and

parity information. (Lines 16-22 of Column 2). Corbin further discloses, that the RAID-5

configuration can have multiple host-client relationships (Lines 33-42 of Column 1), which the examiner considers can be multiple servers.

24.   Regarding the arguments for claims 9, 14, and 17, please refer to the response to claim 1 above.

Conclusion

25.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date·of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

26.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tim Bonura.**

> o   The examiner can normally be reached on **Mon-Fri: 8:30-5:00**.

> o   The examiner can be reached at: **571-272-3654**.

27.   If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, **Scott Baderman.**

> o   The supervisor can be reached on **571-272-3644.**

28.   The fax phone numbers for the organization where this application or proceeding is

assigned are:

      o   **703-872-9306 for all patent related correspondence by FAX.**

29.   Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov/. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

30.   Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the **receptionist** whose telephone number is: **571-272-2100.**

31.   Responses should be mailed to:

      o   **Commissioner of Patents and Trademarks**

        P.O. Box 1450

        Alexandria, VA 22313-1450

tmb
May 20, 2007

SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER